



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

OCT 01 2014

CERTIFIED MAIL NO. 7009 0080 0001 2086 8364
RETURN RECEIPT REQUESTED

Mr. W. Gregory Lehmkuhl
President
Con-way Freight Inc.
2211 Old Earhart Road Suite 100
Ann Arbor, MI 48105-2751

Dear Mr. Lehmkuhl:

Region IX of the U.S. Environmental Protection Agency (the "EPA") is issuing this letter to determine the Clean Air Act, 42 U.S.C. §§ 7401-7671q (the "Act"), compliance status of Con-way Freight Inc. ("Con-way Freight") with respect to Section 2025 of the California Code of Regulations, Title 13, Article 4.5, Chapter 1, which is the California Air Resources Board's ("CARB's") "Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants from In-Use Heavy-Duty Diesel-Fueled Vehicles" (the "Truck and Bus Regulation").¹ The Truck and Bus Regulation is included in the federally-approved and federally-enforceable State Implementation Plan for the State of California.

This letter is a follow-up to EPA's Section 114 letter dated May 7, 2014 for which Con-way Freight's response is dated June 19, 2014 ("Response Letter"). EPA has identified several areas of concern with Con-way Freight's reporting to CARB's Truck Regulation Upload, Compliance, and Reporting System ("TRUCRS"). The areas of concern include: 1) some vehicles² in Con-way Freight's fleet³ appear to have not been reported to TRUCRS; 2) some vehicles in Con-way Freight's fleet that were reported to TRUCRS as retired⁴, appear to have operated in California after the reported retirement date; and 3) EPA identified potential

¹ The full text of the Truck and Bus Regulation is available on the CARB website at <http://www.arb.ca.gov/msprog/onrdiesel/documents/TBFinalReg.pdf>.

² For purposes of this letter, vehicle(s) mean(s) *diesel-fueled vehicles (as described in Section 2025(a) of the Truck and Bus Regulation) with a Gross Vehicle Weight Rating (as defined in Section 2025(d)(33) of the Truck and Bus Regulation) greater than 26,000 pounds.*

³ As defined in Section 2025(d)(28) of the Truck and Bus Regulation.

⁴ For purposes of this letter, retired or retirement means *a vehicle that operated in California during any time period from January 1, 2012 to the date of this letter, but is no longer operating in California.*

incomplete reporting by Con-way Freight to TRUCRS, including missing vehicle retirement and in-service dates. This information request is primarily directed at Con-way Freight submitting a complete and accurate identification of their fleet.

Pursuant to Section 114 of the Act, 42 U.S.C. § 7414, Con-way Freight is hereby required to provide the following information requested in this letter *within thirty (30) calendar days* after receipt of this letter. In responding to this request, Con-way Freight shall use the instructions provided in Enclosure 1.

- 1) Produce a list of the vehicle identification numbers ("VINs") for all vehicles in Con-Way Freight's fleet registered in the State of California during any time period from January 1, 2012 to the date of this letter.
- 2) Identify all vehicles listed in response to request 1 above that were not reported to TRUCRS as of the date of the Response Letter.
- 3) Explain why the vehicles listed in response to request 2 above were not reported to TRUCRS.
- 4) Produce a list of VINs for vehicles in Con-way Freight's fleet not registered in California, but operated in California during any time period from January 1, 2012 to the date of this letter.
- 5) Identify all vehicles listed in response to request 4 above that were not reported to TRUCRS as of the date of the Response Letter.
- 6) Explain why the vehicles listed in response to request 5 above were not reported to TRUCRS.
- 7) For each vehicle identified in response to requests 2 and 5 above, provide:
 - a) VIN;
 - b) state of vehicle registration;
 - c) license plate number;
 - d) engine model year;
 - e) engine family;
 - f) assigned vehicle terminal;
 - g) if the vehicle has a Diesel Particulate Filter ("DPF") (yes or no);
 - h) date vehicle added to fleet; and
 - i) date vehicle retired⁵.

⁵ If the vehicle has not retired, please respond to this request by stating that the vehicle is still operating in California.

- 8) For each vehicle, with an engine model year prior to 2007, in which Con-way Freight responded “no” to request 7(g) above, provide:
- a) VIN;
 - b) total miles operated in California during:
 - i) calendar year (“CY”) 2012;
 - ii) CY 2013; and
 - iii) CY 2014 to the date of this information request.
 - c) total days operated in California during:
 - i) CY 2012;
 - ii) CY 2013; and
 - iii) CY 2014 to the date of this information request.
- 9) For each vehicle identified in response to request 8 above, produce supporting documentation that verifies the miles and days reported. Such documentation may include, but is not limited to, vehicle electronic tracking reports, International Registration Plan or fuel tax records, mileage logs, dispatch records and other supporting records.
- 10) For each vehicle in Con-way Freight’s fleet reported to TRUCRS as retired as of the date of the Response Letter provide:
- a) VIN;
 - b) total miles operated in California from the reported retired date in TRUCRS, as of the date of the Response Letter, to the date of this letter by CY and
 - c) total days operated in California from the reported retired date in TRUCRS, as of the date of the Response Letter, to the date of this letter by CY.
- 11) For each vehicle in Con-way Freight’s fleet that has retired⁶, produce supporting documentation, with corresponding VIN, that verifies:
- a) the vehicle is no longer is operated in California; and
 - b) the date in which the vehicle was no longer operated in California.
- Documentation may include, but is not limited to, vehicle electronic tracking reports, vehicle registration records, internal transfer memorandums, mileage logs, dispatch records, and other supporting records.
- 12) Produce all documents, such as standard operating procedures, memorandums, guidance, or emails generated by Con-way Freight or any third party, such as a consultant, relating to Con-way Freight’s data system(s) that track day-to-day vehicle operations for use in

⁶ Note that this request is asking for vehicles responsive to 7(i) and 10 above. Request 7(i) is directed at trucks that have retired but were not reported to TRUCRS as of the date of the Response Letter. Request 10 is directed at trucks that were reported as retired to TRUCRS before the date of the Response Letter.

preparing Con-Way Freight's submission to TRUCRS. Include documents starting from June 1, 2011 to the date of this letter.

- 13) For the companies identified in response to request 12 of the Response Letter, produce copies of documents establishing compliance with Section 2025(x)(2) of the Truck and Bus Regulation for CY 2012 and for CY 2013.
- 14) The following questions relate to missing data in TRUCRS as of the date of the Response Letter:
 - a) produce the date the vehicle was added to the fleet for the VINs identified in Attachment A; and
 - b) produce the date the vehicle no longer operated in California for the VINs identified in Attachment B.
- 15) Identify all persons that contributed to the response to this letter and to the Response Letter, including name, title, and a short description of their contribution to the letter(s).

If Con-way Freight seeks to withhold any document(s) based on a claim of attorney-client communications privilege or the attorney work product doctrine in its response to this information request, Con-way Freight shall provide with its response a privilege log for each document containing the following information: (i) the date, author(s), every individual to whom the document was originally sent, every individual who subsequently acquired the document, the purpose for which the document was sent to or obtained by those individuals, and the employment titles of the authors and recipients; (ii) the subject matter of the document; (iii) the privilege claimed for the document and all facts supporting the claim of privilege; (iv) the primary purpose(s), including the business purposes, for which the document was made; (v) the question(s) in this information request to which the document is responsive to; and (vi) all facts contained in the document that are responsive to a question in this information request.

The responsive information shall be accompanied by a cover letter sent via certified mail with return receipt requested to the following address:

Ms. Kathleen H. Johnson
Director, Enforcement Division
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Attn: Cyntia Steiner (ENF-2-1)

Please be advised that under Section 113(a) of the Act, 42 U.S.C. § 7413(a), failure to provide the information and documents required by this letter may result in an order requiring compliance, an order assessing an administrative penalty, or a civil action for appropriate relief. Section 113(b) of the Act, 42 U.S.C. § 7413(b), provides for the assessment of a civil penalty, which has been adjusted for inflation to \$37,500 per day, for each violation of the Act. See 40 C.F.R. § 19.4 (for penalties effective after January 12, 2009). In addition, Section 113(c) of the Act, 42 U.S.C. § 7413(c), provides criminal penalties for knowingly making any false material statement in, or omitting material information from, any report required under the Act. The information provided by Con-way Freight may be used by the United States in administrative, civil, or criminal proceedings.

You may, if you desire, assert a confidential business information (“CBI”) claim on behalf of Con-way Freight covering part or all of the information provided to EPA in response to this letter. Any such CBI claim must conform to the requirements set forth in 40 C.F.R. Part 2, particularly 40 C.F.R. § 2.203, and contain supporting documentary evidence. In addition, any such claim must be substantiated in accordance with 40 C.F.R. § 2.204(e)(4).

Specify by page, paragraph and sentence when identifying information from a document where you make a CBI claim. Where your claim does not include all information on a page, please attach a copy of each such page with brackets around the text you claim to be CBI. If a page, document, or group or class of documents claimed by you to be CBI contains a significant amount of information which our Regional Counsel determines is not CBI, your CBI claim regarding that page, document, or group or class of documents may be denied.

You are advised that certain information may be made available to the public pursuant to Section 114(c) of the Act, 42 U.S.C. § 7414(c), and 40 C.F.R. § 2.301, notwithstanding a claim that such information is entitled to confidential treatment. Please note that emission data provided pursuant to Section 114 of the Act, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. Emission data is defined at 40 C.F.R. §§ 2.301(a)(2). If no claim of confidentiality is received with your reply, the information may be made available to the public without notice to Con-way Freight.

This information request is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act because it is not a “collection of information” within the meaning of 44 U.S.C §§ 3502(3) and 3518(c)(1), since it is being issued during the conduct of an investigation involving the EPA against specific individuals or entities. See also 5 C.F.R. § 1320.4.

Con-way Freight shall submit its response to this request postmarked no later than thirty (30) calendar days after receipt of this letter. All information submitted in response to this request must be certified in a signed, separate statement as true, correct, accurate, and complete, to the best of his/her knowledge, by an individual with sufficient knowledge and authority to make such representations on behalf of Con-way Freight. On the last page of your response to this information request, include the certification contained in Enclosure 2.

If Con-way Freight anticipates that it will not be able to respond fully to this request within the time period specified, Con-way Freight must submit a sworn declaration by a responsible corporate official within ten (10) calendar days after receipt of this letter specifying what information will be provided by the allotted deadline, describing the efforts that have been/are being undertaken to obtain the remaining other responsive information, and providing a detailed schedule of when such other responsive information will be provided. Upon receipt and based upon such declaration, EPA may extend the time in which to respond to this information request. Also, please contact EPA if Con-way Freight determines that a full response to a particular request for information would require the submission of an extremely large number of documents or data files. Based upon such notification, EPA may modify the scope of the documents required to be produced.

If you have any questions regarding this request, please contact Cyntia Steiner of my staff at (415) 947-4112; or your attorney can contact Daniel Reich, Office of Regional Counsel, at (415) 972-3911. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kathleen H. Johnson', written in a cursive style.

Kathleen H. Johnson
Director, Enforcement Division

Enclosures

cc: James Ryden, California Air Resources Board

ENCLOSURE 1: Instructions

- 1) Prepare a cover letter that includes a written response to all requests referencing the request number to which each answer or document pertains. In addition, attach to the cover letter the signed certification provided in Enclosure 2.
- 2) To the extent that Con-way Freight has no responsive information or documents for any particular request, this must be explicitly stated in the response.
- 3) Where documents or information necessary for a response are neither in your possession nor available to you, indicate in your response why such documents or information is not available or in your possession and identify any source that either possesses or is likely to possess such information.
- 4) To the extent that a document is responsive to more than one request, this must be so indicated and only one copy of the document need be provided.
- 5) Please include data in response to this information request in spreadsheet format (e.g., Excel format). Provide in an electronic format rather than as images.
- 6) All responsive documents must be:
 - a) provided as an accurate and legible copy in a searchable PDF file format;
 - b) submitted on a disk (CD or DVD media); and
 - c) number stamped in sequential order (e.g. BATES stamped).

ENCLOSURE 2: Statement of Certification

[This Certification is for signature by the president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or another executive with authority to perform similar policy or decision-making functions of the corporation.]

Con-way Freight Inc. is submitting the enclosed documents in response to the U.S. Environmental Protection Agency's ("EPA's") request for information, issued pursuant to Section 114(a) of the Clean Air Act, to determine whether the facility is in compliance with the Clean Air Act, including the federally-approved California Truck and Bus Regulation.

I certify that I am fully authorized by Con-way Freight Inc. to provide the above information on its behalf to EPA.

I certify under penalty of law that I have personally examined and am familiar with the statements and information submitted in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true, correct, accurate and complete. I am aware that there are significant penalties for submitting false statements and information, or omitting required statements and information, including the possibility of fines and imprisonment for knowing violations.

Date: _____

Name (Printed): _____

Signature: _____

Title: _____

Attachment A - List of VINs with missing in-service date in TRUCRS

| VIN | VIN continued | VIN continued |
|-------------------|----------------------|----------------------|
| 1FUBGADV2CSBN1989 | 2FWBA2CKX9AAJ3244 | 3AKBGADV7DSBN2829 |
| 1FUBGADV0CSBN2185 | 3AKBGADVXDSBN2789 | 3AKBGADV3DSBN2830 |
| 1FUBGADV1CSBN2230 | 3AKBGADV6DSBN2790 | 3AKBGADV5DSBN2831 |
| 1FUBGADVXCSBN2257 | 3AKBGADV8DSBN2791 | 3AKBGADV7DSBN2832 |
| 1FUBGADVXCSBN2288 | 3AKBGADVXDSBN2792 | 3AKBGADV9DSBN2833 |
| 1FUBGADV3CSBD2234 | 3AKBGADV1DSBN2793 | 3AKBGADV0DSBN2834 |
| 1FUBGADV5CSBD2235 | 3AKBGADV3DSBN2794 | 3AKBGADV2DSBN2835 |
| 1FUBGADV3CSBN2293 | 3AKBGADV5DSBN2795 | 3AKBGADV4DSBN2836 |
| 1FUBGADV9CSBN2301 | 3AKBGADV7DSBN2796 | 3AKBGADV6DSBN2837 |
| 1FUBGADVXCSBN2310 | 3AKBGADV9DSBN2797 | 3AKBGADV8DSBN2838 |
| 1FUBGADV1CSBN2311 | 3AKBGADV0DSBN2798 | 3AKBGADVXDSBN2839 |
| 1FUBGADV2CSBN2317 | 3AKBGADV2DSBN2799 | 3AKBGADV6DSBN2840 |
| 1FUBGADV2CSBN2320 | 3AKBGADV5DSBN2800 | 3AKBGADV8DSBN2841 |
| 1FUBGADV6CSBN2322 | 3AKBGADV7DSBN2801 | 3AKBGADVXDSBN2842 |
| 1FUBGADV2DSBN2447 | 3AKBGADV9DSBN2802 | 3AKBGADV1DSBN2843 |
| 1FUBGADV8DSBN2453 | 3AKBGADV0DSBN2803 | 3AKBGADV3DSBN2844 |
| 1FUBGADV1DSBN2469 | 3AKBGADV2DSBN2804 | 3AKBGADV5DSBN2845 |
| 1FUBGADV4DSBN2479 | 3AKBGADV4DSBN2805 | 3AKBGADV7DSBN2846 |
| 3AKBGADV2DSBN2527 | 3AKBGADV6DSBN2806 | 3AKBGADV9DSBN2847 |
| 3AKBGADVXDSBN2534 | 3AKBGADV8DSBN2807 | 3AKBGADV0DSBN2848 |
| 3AKBGADV6DSBN2546 | 3AKBGADVXDSBN2808 | 3AKBGADV2DSBN2849 |
| 3AKBGADV5DSBN2554 | 3AKBGADV1DSBN2809 | 3AKBGADV9DSBN2850 |
| 3AKBGADV9DSBN2556 | 3AKBGADV8DSBN2810 | 3AKBGADV0DSBN2851 |
| 3AKBGADV5DSBN2568 | 3AKBGADVXDSBN2811 | 3AKBGADV2DSBN2852 |
| 3AKBGADV3DSBN2620 | 3AKBGADV1DSBN2812 | 3AKBGADV4DSBN2853 |
| 3AKBGADV8DSBN2631 | 3AKBGADV3DSBN2813 | 3AKBGADV6DSBN2854 |
| 3AKBGADV7DSBN2698 | 3AKBGADV5DSBN2814 | 3AKBGADV8DSBN2855 |
| 1FVACYDT7CHBP6247 | 3AKBGADV7DSBN2815 | 3AKBGADVXDSBN2856 |
| 1FVACXDT7DDFB5572 | 3AKBGADV9DSBN2816 | 3AKBGADV1DSBN2857 |
| 1FVACXDT9DDFB5573 | 3AKBGADV0DSBN2817 | 3AKBGADV3DSBN2858 |
| 1FVACXDT0DDFB5574 | 3AKBGADV2DSBN2818 | 3AKBGADV5DSBN2859 |
| 1FVACXDT2DDFB5575 | 3AKBGADV4DSBN2819 | 3AKBGADV1DSBN2860 |
| 1FVACXDT4DDFB5576 | 3AKBGADV0DSBN2820 | 3AKBGADV3DSBN2861 |
| 1FVACXDT8DDFB5578 | 3AKBGADV2DSBN2821 | 3AKBGADV5DSBN2862 |
| 1FUBGADV2BSAV4337 | 3AKBGADV4DSBN2822 | 3AKBGADV7DSBN2863 |
| 1FUBGADVXBSAV4358 | 3AKBGADV6DSBN2823 | 3AKBGADV9DSBN2864 |
| 1FUBGADV2BSAV4371 | 3AKBGADV8DSBN2824 | 3AKBGADV0DSBR9121 |
| 1FUBGADVXBSAV4862 | 3AKBGADVXDSBN2825 | 3AKBGADV2DSBR9122 |
| 2FWBA2CK19AAJ3147 | 3AKBGADV1DSBN2826 | 3AKBGADV4DSBR9123 |
| 2FWBA2CK39AAJ3165 | 3AKBGADV3DSBN2827 | 3AKBGADV6DSBR9124 |
| 2FWBA2CK79AAJ3234 | 3AKBGADV5DSBN2828 | 3AKBGADV8DSBR9125 |

VIN continued

3AKBGADVXDSBR9126
3AKBGADV1DSBR9127
3AKBGADV3DSBR9128
3AKBGADV5DSBR9129
3AKBGADV1DSBR9130
3AKBGADV3DSBR9131
3AKBGADV5DSBR9132
3AKBGADV7DSBR9133
3AKBGADV9DSBR9134
3AKBGADV0DSBR9135
3AKBGADV2DSBR9136
3AKBGADV4DSBR9137
3AKBGADV6DSBR9138
3AKBGADV8DSBR9139
3AKBGADV4DSBR9140
3AKBGADV6DSBR9141
3AKBGADV8DSBR9142
3AKBGADVXDSBR9143
3AKBGADV1DSBR9144
3AKBGADV3DSBR9145
3AKBGADV5DSBR9146
3AKBGADV7DSBR9147
3AKBGADV9DSBR9148
3AKBGADV0DSBR9149
3AKBGADV7DSBR9150
3AKBGADV9DSBR9151
3AKBGADV0DSBR9152
3AKBGADV2DSBR9153
3AKBGADV4DSBR9154
1FUBGADV2CSBD2189
1FVACXDT6DDFB5577
2FWBA2CG05AP04558
2FWBA2CG16AV25303
2FWBA2CG85AP04551
2FWBA2CK08AY91051
OTTAWA71614
OTTAWA72552
OTTAWA72556

Attachment B - VINs with missing retirement dates in TRUCRS

VIN

1FTYS80F1VVA33146
1FUBGADV8CSBM8594
1FVACXDT6DDFB5577
2FWBA2AS03AL73033
2FWBA2AS03AL73064
2FWBA2AS13AL73039
2FWBA2AS23AL73034
2FWBA2AS23AL73051
2FWBA2AS33AL73057
2FWBA2AS42AJ71004
2FWBA2AS43AL73035
2FWBA2AS43AL73052
2FWBA2AS53AL73030
2FWBA2AS53AL73058
2FWBA2AS63AL73036
2FWBA2AS73AL73028
2FWBA2AS73AL73045
2FWBA2AS73AL73059
2FWBA2AS73AL73062
2FWBA2AS82AJ71006
2FWBA2AS83AL73037
2FWBA2AS83AL73040
2FWBA2AS83AL73068
2FWBA2AS93AL73029
2FWBA2ASX3AL73038
2FWBA2ASX3AL73055
2FWBA2ASX3AL73069
2FWBA2CK09AAJ3074
2FWBA2CK09AAJ3172
2FWBAVAK31AH30111
2FWBAVAK51AH30109
2FWBAVAK61AH50062
2FWBAVAK61AK01023
2FWBAVDC85AN44281
2FWWBJBA1YAF79048
2FWWBJBAXYAF79050
2FWWMJBA4YAF49147
OTTAWA71614

